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Governor's Office of Planning & Research

June 01 2021

May 28, 2021

STATE CLEARINGHOUSE

Mr. Donald Barrella
Napa County Department of Planning, Building and Environmental Services
1195 Third Street, Suite 210
Napa, CA 94559
Donald.Barrella@countyofnapa.org

Subject: KJS and Sorrento Vineyard Conversion Erosion Control Plan Application
#P17-00432-ECPA, Draft Environmental Impact Report,
SCH No. 2018092042, Napa County

Dear Mr. Barrella:

California Department of Fish and Wildlife (CDFW) personnel reviewed the draft Environmental Impact Report (EIR) for the KJS and Sorrento Vineyard Conversion Erosion Control Plan (Project). CDFW is submitting comments on the draft EIR to inform Napa County, as Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

CDFW is a Trustee Agency pursuant to the California Environmental Quality Act (CEQA) and is responsible for the conservation, protection, and management of the State's biological resources (Pub. Resources Code, § 21000 et seq.; Cal. Code Regs., tit. 14, § 15386). CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as a California Endangered Species Act (CESA) Permit, a Native Plant Protection Act Permit, or a Lake and Streambed Alteration (LSA) Agreement, and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources.

ENVIRONMENTAL SETTING

The 950.9-acre KJS Investment Properties and Sorrento Inc. Ranch (i.e., Project property) is located at 3370 and 3380 Sage Canyon Road, approximately 10 miles east of the City of St. Helena and approximately 3.75 miles west of Lake Berryessa in unincorporated Napa County. The Project property resides in Elder Valley. Elder Creek, a tributary to Sage Creek thence Lake Hennessey, bisects the Project site. The Project property contains a 90 acre-feet on-stream reservoir (Matheson Reservoir) and a few off-stream ponds. Approximately 104 acres of vineyard exists on the Project property. Within the Project development area, there is 116.54 acres of annual grassland habitat, 33.58 acres of mixed oak woodland, and 4.35 acres of Chaparral/Scrub habitat. Elevations within the development area range from 940 feet to 1,680 feet above mean sea level. Ground slopes within the development area range from 3 percent to over 30 percent.

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PROJECT DESCRIPTION

The Project would develop 156.8 acres of vineyard within 33 vineyard blocks. Vineyard development activities include removing pasture, hayfield, grassland, brush/shrubland, and trees and woodland within the proposed development area. Other activities include soil ripping, rock removal, soil cultivation, seeding of a cover crop, mulching, trenching for irrigation pipelines, installing a trellis system and wildlife exclusion fence, and laying out vine rows. In addition, temporary and permanent erosion control measures would be installed. The Project also includes Petitions for Change on Water Right License 9125 and Permit 18459. Water Right Permit 18459 allows the diversion of 48 acre-feet of water per year from Elder Creek to storage in an on-stream reservoir; however, the Petition for Change includes relocating to storage in an off-stream reservoir. The Project also proposes to construct a point of diversion within Elder Creek.

COMMENTS AND CONCERNS

Western Burrowing Owl (*Athene cunicularia*)

Mitigation Measure 3.3-1g in the draft EIR would not reduce potential impacts to burrowing owl, a California Species of Special Concern, to less-than-significant because conducting a single survey within 14 to 30 days of the start of Project activities would be unlikely to detect burrowing owls. Burrowing owls may use the Project site and adjacent habitat for foraging, overwintering, and/or nesting habitat.

CDFW recommends the following mitigation measures:

A qualified biologist conduct a habitat assessment and if suitable habitat is present surveys in accordance with the California Department of Fish and Game (now CDFW) 2012 Staff Report on Burrowing Owl Mitigation survey methodology (see <https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>). Surveys shall encompass the project area and a sufficient buffer zone to detect owls nearby that may be impacted. Time lapses between surveys or project activities shall trigger subsequent surveys including but not limited to a final survey within 24 hours prior to ground disturbance before construction equipment mobilizes to the Project area. The qualified biologist shall have a minimum of two years of experience implementing the CDFW 2012 Staff Report survey methodology resulting in detections.

If burrowing owls are detected on or adjacent to the site, the following restricted activity dates and setback distances recommended per CDFW's Staff Report (2012) shall be implemented, unless reduced buffers are accepted by CDFW in writing based on site-specific conditions:

- *From April 1 through October 15, low disturbance and medium disturbance activities shall have a 200-meter (656 feet) buffer while high disturbance activities*

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shall have a 500-meter (1,640 feet) buffer from occupied nests and wintering sites.

- *From October 16 through March 31, low disturbance activities shall have a 50-meter buffer (164 feet), medium disturbance activities shall have a 100-meter (328 feet) buffer, and high disturbance activities shall have a 500-meter (1,640 feet) buffer from occupied nests and wintering sites.*

If burrowing owls are present outside of the nesting season, burrowing owls may be passively relocated from the project site and adjacent habitat using CDFW-accepted methods so that construction can proceed. Any required passive relocation of burrowing owls would require CDFW acceptance. If passive relocation of burrowing owls is necessary, a qualified biologist shall prepare a Relocation Plan, including compensatory habitat as described below, for CDFW review and acceptance prior to the start of construction activities.

If the survey determines that the project site is actively being used by burrowing owl, or any owls are passively relocated as described above, then compensatory habitat mitigation shall be provided. The habitat mitigation/compensation plan shall be submitted to CDFW for review and approval prior to the start of project activities. Habitat compensation acreages shall be approved by CDFW, as the amount depends on site-specific conditions, and completed before project construction. It shall also include placement of a conservation easement and preparation and implementation of a long-term management plan. If burrowing owls are observed during surveys, notification shall also be submitted to the California Natural Diversity Database (CNDDDB; see <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>).

Roosting Bats

The Project would remove trees that could contain roosting habitat for bats, including special-status species like the pallid bat (*Antrozous pallidus*), a California Species of Special Concern. Mitigation Measures 3.3-1i, 3.3-1j, and 3.3-1k are proposed to reduce impacts to bats to a level of less-than-significant.

CDFW recommends that Mitigation Measure 3.3-1k be revised as follows:

At least 30 days prior to tree removal activities, a qualified biologist shall assess all trees to determine if they contain suitable bat roosting habitat (e.g., cavities, crevices, deep bark fissures). If any trees contain such habitat, bat presence shall be presumed. Trees containing bat roosting habitat shall be removed using the method described below during the following seasonal periods of bat activity:

Prior to maternity season – from approximately March 1 (or when night temperatures are above 45°F and when rains have ceased) through April 15 (when females begin to

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give birth to young); and prior to winter torpor – from September 1 (when young bats are self-sufficiently volant) until October 15 (before night temperatures fall below 45 degrees Fahrenheit and rains begin).

On day 1, in the afternoon and under the supervision of a qualified biologist, chainsaws only shall be used to remove tree limbs that do NOT contain suitable bat roosting habitat (e.g., cavities, crevices, deep bark fissures). The next day, the rest of the tree shall be removed.

If bat habitat trees cannot be removed during the above seasonal periods of bat activity, a qualified biologist shall survey the trees to determine if the tree contains a maternity colony or winter torpor bats. If the qualified biologist cannot make this determination with certainty, the presence of maternity colonies or winter torpor bats shall be assumed, and removal of the tree shall be delayed until the seasonal periods of bat activity specified above. If the biologist determines bats are present but maternity colony or winter torpor bats are absent, then the tree may be removed outside of the above periods of seasonal bat activity using the above two step tree removal process. If the qualified biologist determines that bats are absent, then the tree may be removed without bat seasonality or method restrictions.

Foothill Yellow-Legged Frog (*Rana boylei*)

The Northwest/North Coast foothill yellow-legged frog (FYLF) clade is a California Species of Special Concern and has been observed approximately 1.25 miles away from the Project site in Sage Creek (a direct tributary of Elder Creek). FYLF make seasonal movements out of mainstem streams into headwater tributaries to avoid high winter flows. CDFW recommends that FYLF is added to Mitigation Measures 3.3-1b, 3.3-1c, and 3.3-1d. Mitigation Measure 3.3-1b requires that a qualified biologist conduct a worker education program for all on-site personnel prior to starting construction; Mitigation Measure 3.3-1c requires that a qualified biologist conduct a pre-construction survey for special-status species 24 hours prior to starting construction, and Mitigation Measure 3.3-1d requires that a biological monitor oversee all vegetation removal, grading activities, and pipe installation within 492 feet of suitable aquatic habitat.

CDFW recommends the following additional mitigation measures:

Prior to starting project construction, a qualified biologist shall conduct a pre-construction survey for foothill yellow legged frog using a methodology accepted by CDFW. Survey methodology shall target all life stages and shall include carefully searching under rocks, within vegetation such as sedges and other clumped vegetation, and under undercut banks, no less than 50 feet from the streambed, where appropriate, and at least 500 feet upstream and downstream of the project area. If foothill yellow-

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legged frog is observed during the survey, CDFW shall be notified within 24 hours and project construction shall not begin until CDFW provides written permission to do so.

If foothill yellow-legged frogs are discovered during pre-Project surveys or during Project construction, all work in the immediate area shall cease until the individual moves out of harm's way, as determined by the on-site biological monitor.

Riparian Habitat

Approximately 0.02 acres of Elder Creek and 0.005 acres of the unnamed pond would be permanently impacted by the Project. Impacts to riparian habitat would be potentially significant.

CDFW recommends the following mitigation measures:

Permanent impacts shall be mitigated by offsite restoration within the same stream or watershed at a minimum 3:1 mitigation to impact ratio for the linear distance and acres permanently impacted. Temporary impacts shall be restored onsite at a 1:1 ratio. A restoration plan shall be prepared and implemented within the same year that Project construction is completed. The plan shall be prepared by a qualified biologist and shall include success criteria, maintenance, and monitoring of plantings for five years. If success criteria are not met, replacement planting, maintenance, and monitoring will be required for an additional five years.

The above recommended mitigation measures would likely be required under the LSA Agreement for the Project, if issued by CDFW.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in take of plants or animals listed under CESA, either during construction or over the life of the Project. Issuance of a CESA Permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the project will impact CESA listed species, early consultation is encouraged, as significant modification to the project and mitigation measures may be required to obtain a CESA ITP.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species (Pub. Resources Code, §§ 21001, subd. (c), 21083; CEQA Guidelines, §§ 15380, 15064, & 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings and a Statement of Overriding

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Consideration (SOC). The Lead Agency's SOC does not eliminate the Project proponent's obligation to comply with CESA.

Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake, or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW, as a Responsible Agency, will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

Pursuant to the draft EIR, the Project will submit an LSA Notification for constructing a point of diversion in Elder Creek, a spillway berm and overflow structure at the unnamed pond near proposed Block 29, and a 48-acre-foot capacity off-stream pond. Any associated impacts to riparian vegetation resulting from the above Project activities shall also be covered under the LSA Notification. CDFW must execute a final, signed LSA Agreement before the abovementioned Project activities may begin, unless otherwise approved by CDFW.

Migratory Birds and Raptors

CDFW has authority over actions that may disturb or destroy active nest sites or take birds. Fish and Game Code sections 3503, 3503.5, and 3513 protect birds, their eggs, and nests. Fully protected species may not be taken or possessed at any time (Fish & G. Code, § 3511). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

ENVIRONMENTAL DATA

CEQA requires that information developed in EIRs and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. [Pub. Resources Code, § 21003, subd. (e)]. Accordingly, please report any special-status species and natural communities detected during Project surveys to CNDDDB. The CNDDDB online field survey form and other methods for submitting data can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

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FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, § 711.4; Pub. Resources Code, § 21089). Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW.

CDFW appreciates the opportunity to provide comments on the draft EIR for the proposed Project and is available to meet with you to further discuss our concerns. If you have any questions, please contact Mr. Garrett Allen, Environmental Scientist, at Garrett.Allen@wildlife.ca.gov; or Ms. Melanie Day, Senior Environmental Scientist (Supervisory), at Melanie.Day@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse (2018092042)